

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-42, all of which have been rejected. By this Amendment, claims 1, 15 and 29 have been amended, as set forth above, to further clarify the language used in these claims and to further prosecution of the present application. The Applicant respectfully submits that the claims define patentable subject matter. The remarks by the Examiner made in the Final Office Action are duly noted.

Claims 1, 6-9, 12-15, 20-23, 26-29, 34-37 and 40-42 stand rejected under 35 U.S.C. § 102(e) as being anticipated by US PG PUB No. 20030140131, by Chandrashekhar et al. (hereinafter, Chandrashekhar). Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chandrashekhar, in view of U.S. Patent No. 6,088,451, issued to He et al. (hereinafter "He et al."). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

### **REJECTION UNDER 35 U.S.C. § 102**

#### **I. Chandrashekhar Does Not Anticipate Claims 1, 15 and 29**

The Applicant first turns to the rejection of claims 1, 5, and 29 under 35 U.S.C. 102(e) as being anticipated by Chandrashekhar. With regard to the

anticipation rejections under 102(e), MPEP 2131 states that “[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” See Manual of Patent Examining Procedure (MPEP) at §2131 (internal citation omitted). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” See *id.* (internal citation omitted).

**A. Rejection of Independent Claim 1, 15 and 29 under 35 U.S.C. § 102 (e)**

With regard to the rejection of independent claim 1 under 35 U.S.C. § 112(e), the Applicant submits that Chandrashekhar does not disclose or suggest at least the limitation of “authenticating said originating access device using a second PHY channel” as recited by the Applicant in independent claim 1. More specifically, the Office Action does not provide any support for “authenticating said originating access device”. The references cited in the Final Office Action, Section 3.1, to support the rejection of claim 1 under 35 U.S.C. §102(e), namely Chandrashekhar paragraph [0057], lines 1-4 make no reference to “authenticating said originating access **device**”.

The Applicant has amended claims 1, 15 and 29. The Applicant asserts that claims 1, 15 and 29 constitute patentable subject matter.

The Applicant submits that Chandrashekhar does not disclose, among

other things, the amended claim limitation recited by the Applicant: "authenticating said communication session by authenticating said originating access device using a second PHY channel".

The Applicant submits that Chandrashekhar does not disclose the limitation of "hosting said communication session over a third PHY channel" as recited by the Applicant in the amended independent claim 1. The references cited in the Office Action of February 9, 2007 to support the rejection of claim 1 under 35 U.S.C. §102(e), namely Chandrashekhar paragraph [0054], lines 3-5 and lines 10-12; paragraph [0040], lines 4-6; paragraph [0018], lines 1-5; paragraph [0056], lines 1-3 and paragraph [0048], lines 1-7 make no reference to at least "hosting said communication session over a third PHY channel".

In light of the citation of MPEP §2131 given above that states that "[a] claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference", the Applicant respectfully submits that the rejections be withdrawn and claim 1 allowed.

Accordingly, independent claim 1 is not anticipated by Chandrashekhar and is respectfully asked to be made allowable. Independent claims 15 and 29 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that independent claims 15 and 29 are also allowable over the references cited in the Office Action at least for the reasons

stated above with regard to claim 1.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 15 and 29.

**B. Rejection of Dependent Claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 15 and 29 under 35 U.S.C. § 102(e) as being anticipated by Chandrashekhar has been overcome and request that the rejection be withdrawn. Additionally, claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42 depend from independent claims 1, 15 and 29, respectively, and are, consequently, also respectfully submitted to be allowable.

Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 6-9, 12-14, 20-23, 26-28, 34-37 and 40-42.

**REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference* to do so'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover, MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion..., citing *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**II. The Proposed Combination of Chandrashekhhar and He et al. Does Not Render Claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 Unpatentable**

The Applicant now turns to the rejection of claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 as being unpatentable under 35 U.S.C. §103(a) over Chandrashekhhar in view of He et al. . The Applicant notes that the proposed combination of Chandrashekhhar and He et al. forms the basis for all of the pending rejections.

The Applicant notes that independent claims 1, 15 and 29 have not been rejected under 35 U.S.C. §103(a) and are hence allowable. Since claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 are dependant on independent claims 1, 15, and 29, respectively, and since He et al. does not overcome the deficiencies of Chandrashekhhar, the Applicant respectfully submits that the rejection of the dependent claims consequently be withdrawn and the claims 2-5, 10, 11, 16-19, 24, 25, 30-33, 38 and 39 to be allowable.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-42 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Attorney at (312) 775-8105.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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/Ognyan Beremski/

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Ognyan Beremski, Esq.  
Registration No. 51,458  
Attorney for Applicant

MCANDREWS, HELD & MALLOY, LTD.  
500 WEST MADISON STREET, 34TH FLOOR  
CHICAGO, ILLINOIS 60661  
(312) 775-8105

/CZF